

FEDERAL TIMBER CONTRACT PAYMENT
MODIFICATION ACT

AUGUST 27, 1984.—Ordered to be printed

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August 6), 1984

Mr. McCURE, from the Committee on Energy and Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2838]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2838) to authorize the Secretaries of the Interior and Agriculture to provide assistance to groups and organizations volunteering to plant tree seedlings on public lands, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

This Act may be cited as the "Federal Timber Contract Payment Modification Act".

SEC. 2. (a) (1) Notwithstanding any other provisions of law, in order to retain jobs, to preserve free competition, to utilize the potential productive capacity of plants, to preserve small communities dependent on a single economic sector to assure an open and competitive market for future sales of Government timber, and to lessen the impact of unemployment, the Secretary of Agriculture for national forest lands and the Secretary of the Interior for public lands under their respective jurisdictions are authorized and directed to permit a requesting purchaser to return to the Government a volume of the purchaser's timber contracts as determined under paragraph (2) upon payment of a buy-out charge from such purchaser in an amount as determined under paragraph (3). The purchaser shall be released from further obligation to cut, remove and pay for timber under such contract upon payment, or arrangement for payment as pro-

vided under paragraph 3(E), of such buy-out charge and completion of any obligation required pursuant to subsection (4) (B).

(2) (A) To qualify for buy-out under this section, a timber sales contract must have been bid prior to January 1, 1982, and be held at the date of enactment of this Act. A contract is qualified for buy-out notwithstanding the fact that it was reformed after October 1, 1983, pursuant to Bureau of Land Management Instructional Memorandum 83-743 or is included in a Forest Service multisale plan pursuant to the President's program of July 28, 1983.

(B) A purchaser holding more than twenty-seven million three hundred thousand board feet of net merchantable sawtimber as of January 1, 1982 in qualifying contracts as provided in (A) shall be entitled to buy out up to 55 per centum of such timber volume up to a maximum of two hundred million board feet.

(C) A purchaser holding twenty-seven million three hundred thousand or less board feet of net merchantable sawtimber as of January 1, 1982 in qualifying contracts as provided in (A) shall be entitled to buy out up to fifteen million board feet of such timber volume or one contract, whichever is greater in volume.

(D) So long as the volume limitation of two hundred million board feet is not exceeded, the percentage limitation of paragraph (B) or the volume limitation of paragraph (C) may be exceeded by a volume amount not to exceed the volume of the smallest volume contract bought out by the purchaser if the purchaser could not otherwise attain his percentage or volume entitlement.

(E) Timber returned to the Government pursuant to this subsection shall be available for resale by the Government upon payment, or arrangement for payment, of the buy-out charge and completion of obligations, if any, under paragraph 4(B).

(3) (A) Sums collected by the appropriate Secretary in connection with the buy out of contracts pursuant to this subsection shall be available for appropriation to the appropriate secretary for the further management of timber and shall be determined as follows: The purchaser's loss on any qualifying timber sales contracts shall be determined by the Forest Service or the Bureau of Land Management by subtracting the current delivered log value (as determined by such agency) from the delivered log cost based on the current contract return (as determined by such agency) of any such contracts. If such loss is—

(i) in excess of 100 per centum of the net book worth of the purchaser, the buy-out cost shall be \$10 per one thousand board feet of currently held volume bought out;

(ii) in excess of 50 per centum up to 100 per centum of the net book worth of the purchaser, the buy-out cost shall be 10 per centum of the contract overbid but at least \$10 per one thousand board feet of currently held volume bought out; or

(iii) up to 50 per centum or less of the net book worth of the purchaser, the buy-out cost shall be 15 per centum of the contract overbid but at least \$10 per one thousand board feet of currently held volume bought out.

(B) For purposes of this paragraph, the term "net book worth" does not include the value of any outstanding uncut Federal timber sales contracts.

(C) Net book worth shall be, subject to agency verification, as determined by an independent certified public accountant in accordance with generally accepted accounting standards for the timber industry.

(D) A purchaser may elect to pay the buy-out cost imposed by paragraph (C) in lieu of utilizing loss and net book worth determinations.

(E) A purchaser may elect to pay the buy-out charge in quarterly payments over a period not to exceed five years at a rate of interest fixed at the current rate for government borrowing as determined by the Secretary of the Treasury. The first such quarterly payment shall be made at the time the arrangement for payment is made.

(4) (A) Contracts returned pursuant to this subsection under which no harvest has begun shall be returned in full.

(B) Contracts returned to the appropriate Secretary pursuant to this subsection under which harvest has begun, shall be returned conditionally. The return shall become final after the purchaser has completed stages of contractual obligations for the units on which harvest has begun, including work on roads, to logical stopping points as determined by the Secretary in consultation with the purchaser. All remaining unharvested units must be returned.

(C) The appropriate Secretary may reject return of a contract on which harvest has begun if he determines, in his discretion, that the remaining unharvested portion is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would seriously disadvantage the Government.

(5) (A) Timber from returned or defaulted contracts shall be offered for resale in an orderly fashion as part of, and not in addition to, the normal congressionally authorized timber sales program, and in a manner which does not disrupt regional markets or artificially depress domestic timber prices. Timber from returned or defaulted contracts shall be given preference for resale in the Forest Service timber sales programs.

(B) Timber sales in Forest Service region 6 shall not exceed four billion three hundred million board feet of net merchantable sawtimber in fiscal year 1984.

(C) Beginning in fiscal year 1985 and continuing through fiscal year 1991 or the fiscal year in which timber contract extensions in Region 6 granted under the President's program of July 28, 1983 (as constituted at the date of enactment of this Act), are completed, whichever is later, the Secretary of Agriculture shall set, and periodically adjust as necessary, the maximum annual timber sale volume in region 6. Such maximum sale volume shall be set so as to achieve a volume of region 6 net merchantable sawtimber under contract at the end of each fiscal year which does not exceed twelve billion three hundred million board feet: *Provided, however*, That such maximum annual sale volume shall not exceed five billion two hundred million board feet of net merchantable sawtimber.

(6) (A) The Secretary of the Interior and the Secretary of Agriculture shall publish final rules for the implementation of this subsection in the Federal Register within ninety days after the date of enactment of this Act.

(B) Such final rules shall require purchasers to submit buy-out requests to the appropriate Secretary within ninety days after the publication of such rules.

(7) (A) For purposes only of determining a purchaser's buy-out limitation under subsection (2) and net worth in connection with buy-out cost under subsection (3), concerns which are affiliates as defined under paragraph (B) of this subsection shall be treated as if they were a single entity.

(B) Definition of affiliates: Concerns are affiliates of each other when they are primarily engaged in the logging or forest products industry and either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. In determining whether or not affiliation exist, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(C) Definition of purchaser: For the purposes of this Act, a purchaser is the holder of a contract to purchase timber from the Secretary of Agriculture or the Secretary of the Interior.

(b) (1) Timber contracts bid prior to January 1, 1982, not bought out pursuant to subsection (a) and included in the President's program of July 28, 1983, shall not be subject to any further extension of time for performance except as permitted under the President's program of July 28, 1983, as implemented by the Secretary of Agriculture and the Secretary of the Interior, providing for the extension of certain timber sale contracts and requiring the phased harvesting of such extended contracts, which program is hereby ratified except as modified by paragraph (2).

(2) Notwithstanding any other provision of law, timber contracts extended pursuant to the president's program of July 28, 1983, as implemented by the Secretary of Agriculture shall not be subject to reappraisal, to inclusion of additional provisions for calculating damages for default, to changes in basic scaling procedures, or to addition of any contract provision which was not being used in the timber sale program as of June 1, 1984.

SEC. 3. (a) Notwithstanding any other provision of law, the Secretary of Agriculture is directed to waive annually without charge all or a portion of payment of rental fees required under terms of a permit for use of certain lands of the National Forest System as organization camps by local units of the Boy Scouts of America or such other nonprofit organization when such local units of the Boy Scouts of America or such nonprofit organization are willing to perform services,

as the Secretary prescribes and determines will yield a valuable benefit to the public and to the program of the Secretary of such lands. If the Secretary determines that a local unit of the Boy Scouts of America or such other nonprofit organization has not fully performed such services, such organization shall not be entitled in the subsequent year to waiver under the provisions of this section.

(b) The term "other nonprofit organization" shall mean (1) a nonprofit organization holding an exemption under section 501(c) of the Internal Revenue Code, as amended; and (2) a nonprofit association or nonprofit corporation, which is not controlled or owned by profitmaking corporations or business enterprises, and which is engaged in public or semipublic activity to further public health, safety, or welfare.

2. Amend the title so as to read:

An Act entitled the "Federal Timber Contract Payment Modification Act".

PURPOSE OF THE MEASURE

The purpose of H.R. 2838, as reported, is to authorize and direct the Secretary of Agriculture and the Secretary of the Interior to allow purchasers of federally owned timber, upon payment of a buy-out charge, to return certain unfulfilled timber sale contracts to the Federal Government. In addition, the measure would place a limitation on the volume of federally owned timber to be sold in Forest Service Region 6 (Oregon and Washington) during specified future years; and would ratify the President's multi-sale extension program of July 28, 1983.

The Act also provides authority and direction to the Secretary of Agriculture to waive, in part or in total, Forest Service special use permit fees for those nonprofit organization camps on National Forest System lands, when such organizations are willing to perform services that yield a public benefit (on such lands).

SUMMARY OF MAJOR PROVISIONS

Section 1 is the enacting clause and popular name by which the Act may be cited.

Section 2 contains the provisions for Federal timber contract modification. Subsection 2(a) provides for the buying out of certain contracts for the sale of Federal timber, and for a limitation on the sale of timber in Forest Service Region 6 during specified future years. Subsection 2(b) concerns the operation of the President's multi-sale 5-year timber contract extension program.

Section 3 provides for the waiver of Forest Service special use fees for those nonprofit organizations who perform public benefit services.

BACKGROUND AND NEED

Sections 1 and 2

Most small to mid-sized timber companies, particularly those in the Western States, are heavily dependent on timber from the public lands. They purchase timber, by contract, from the U.S. Forest Service or the Bureau of Land Management; cut the trees, truck the logs to their mills, and process the logs into lumber, wood products, or plywood. The interim period between signing the contract for the standing trees and marketing the finished product is frequently 3 to 5 years.

During the late 1970's and early 1980's rampant inflation, optimistic predictions of housing demand, intense competition among buyers, and the fear of future constriction of the timber supply, caused many timber companies to contract for timber from the Government at prices well above today's market value. That means that, at current market prices, the raw material cannot be converted by the companies holding contracts into marketable products, i.e. lumber and plywood, without incurring substantial losses.

It is estimated that if all the timber purchasers were to go ahead and log the timber under contract and produce the lumber and plywood, they would lose nearly \$4 billion. Such losses will be considered unacceptable, and many of the companies will let these trees stand uncut in the forest and let the contracts expire. The Federal Government policy in that instance is to resell the timber and bill the original purchaser for the damages, which are calculated as the difference between the original price and the new price. With the downturn in the market those damages will be overwhelming to small and medium sized businesses could face bankruptcy. The Government could not collect its damages from bankrupt companies, workers would lose their jobs, and timber dependent communities already in precarious situations, would lose the main employer.

H.R. 2838, as reported, will allow purchasers to pay for the cancellation of a portion of these inoperable timber contracts the amount of which would be determined by the ratio of a company's potential contract losses to its net worth.

It will allow purchasers to pay the Government for termination of up to 55 percent of their timber under contract, with a limit of 200 million board feet for any one purchaser. The Government retains the timber, but receives compensation and is then able to resell it. Because of the limitation on the termination, the legislation does not eliminate all potential losses. Of the nearly 22 billion board feet of Federal timber under contract in the West prior to January 1, 1982, this bill will allow the termination of over 12 billion feet, currently valued at over \$2.8 billion. It will leave nearly 9 billion feet of the timber purchased prior to 1982 on the books.

Section 3

H.R. 2838, as reported, would also provide the authorization for nonprofit organizations holding Forest Service special use permits for campsites on National Forest System lands; to perform public benefit services in lieu of paying permit fees.

Historically, Forest Service special use permit fees were on a flat rate basis, usually ranging from \$35 to \$70 per year. In the 1960's, in response to Public Law 137 (65 Stat. 290) reenacted as 31 U.S.C. 9701 in 1982, and O.M.B. instructions (OMB Circular A-25), the Forest Service adopted a new fee formula. Under the formula, annual fees are 5 percent of the appraised value of the site occupied by the camp. With the rapidly inflating land values, annual fees of \$500 per acre are not uncommon. A typical organizational campsite could occupy up to 10 acres, which means a \$5,000 annual rental fee to the Forest Service. Obviously, this is beyond the ability of many nonprofit organizations to pay. By allowing members of nonprofit organizations to perform public services in lieu of paying such fees, they may continue to enjoy the benefits of the camping expense and

at the same time, give them pride and accomplishment that comes from making a valuable contribution to society.

LEGISLATIVE HISTORY

H.R. 2838 was passed by the House of Representatives on November 16, 1983. A hearing before the Senate Subcommittee on Public Lands and Reserved Water was held on June 28, 1984.

The Committee amended H.R. 2838 to include the major provisions of S. 2753. S. 2753 was introduced by Mr. Hatfield on June 13, 1984, and co-sponsored by Messrs. Cranston, Packwood, Gorton, Evans, Wilson, Goldwater, DeConcini, Ford, Stevens, Murkowski, Thurmond, Heflin and Long. No hearings were held on S. 2753. However, hearings were held on a similar measure, S. 2805, during the 97th Congress. The Committee ordered S. 2805 favorably reported on September 28, 1982. The Administration strongly opposes H.R. 2838 as reported from the Committee.

At a business meeting on August 1, 1984 the Senate Committee on Energy and Natural Resources ordered H.R. 2838, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 1, 1984, by unanimous vote of a quorum present recommends that the Senate pass H.R. 2838, if amended, as described herein.

COMMITTEE AMENDMENTS

The committee adopted an amendment to H.R. 2838 in the nature of a substitute text. The amendment contains the major provisions of S. 2753, and differs from the House passed version as follows:

Section 1 cites the measure as the "Federal Timber Contract Payment Modification Act".

Section 2, Subsection (a) paragraph (1) establishes a program under which purchasers of Federal timber are entitled to return contracts covering a volume of timber as determined under paragraph (2) to the Federal Government upon payment of a buy-out charge as determined under paragraph (3). Paragraph (1) states a number of policy goals to be achieved by enactment of this program.

Subject to other provisions of the subsection, paragraph (1) both authorizes and directs the Secretary of Agriculture for National Forest system lands and the Secretary of the Interior for public lands under their respective jurisdictions to permit requesting purchasers to return timber sale contracts to the government. The legislation does not cover timber contracts sold by other agencies (such as the Department of Defense) nor does it apply to lands under the respective jurisdictions of the Secretary of Agriculture and Secretary of the Interior other than those provided. Thus, for example, it includes for the Secretary of the Interior the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road grant lands in Oregon (commonly referred to as the O&C lands) and public lands administered by B.L.M., but does not affect sales of timber on Indian reserva-

tions under the jurisdiction of the Secretary of the Interior. Where other requirements of subsection (a) are met, the purchaser is entitled to return the contracts upon his request.

Paragraph (1)

Paragraph (1) provides that the purchaser shall be released from further obligation under returned contracts upon payment, or arrangement for payment as provided under subparagraph 3(E), of the buy-out charge and completion of any obligations required pursuant to subparagraph (4)(B) governing partially operated sales.

Where contract obligations are required to be fulfilled pursuant to subparagraph (4)(B), those obligations should be listed by the agency and agreed to with the returning purchaser at the time of the buy-out payment or arrangement for payment. At that point, it shall be considered to have been returned conditionally, pending completion of the listed obligations.

The obligations from which the purchaser is to be released upon payment, or arrangement for payment, of the buy-out charge are those contractual obligations concerned with the cutting, removal and payment for timber, including road construction.

Under current Forest Service timber sale policy, (FSM 2433.35), when a contract is being bought out, the purchaser's performance bond may be released upon payment, or arrangement for payment, of the buy-out charge.

Paragraph (2)

Paragraph (2) specifies what timber contracts qualify for buy-out and what proportion or volume of its qualifying timber volume a purchaser may return to the Government.

To qualify for buy-out, a timber sales contract must have been bid prior to January 1, 1982, and be held at the date of enactment.

In accordance with standard Forest Service timber sale contract clause B8.2, a contract is currently held if its date of expiration, including any extensions or contract term adjustments, has not passed, it has not been otherwise disposed of, and it is held by the party who would make the buy-out request. As provided in subparagraph (7)(C), for the purposes of this Act, a purchaser is the holder of a contract to purchase timber from the Secretary of Agriculture or the Secretary of the Interior.

Subparagraph (2)(A) provides that a contract is qualified for buy-out even if its deadline for performance was changed pursuant to either the Bureau of Land Management or Forest Service's implementation of the President's program of July 28, 1983. This provision is to assure that participation in the President's program does not disqualify a purchaser from utilizing this legislative program. A contract which had its expiration date changed in any other fashion also is qualified for buy-out if the other conditions are met.

Paragraphs (2)(B) and (C) specify the maximum volumes of qualifying timber which purchasers may buy out and their minimum buy-out entitlements. The initial calculation which must be made is the volume of qualifying timber from which the purchaser's buy-out entitlement is calculated. The volume of timber is that volume remaining as of January 1, 1982 in contracts which qualify under Subparagraph (2)(A). If, for example, a contract for 5 million board feet of timber

as estimated and stated by the agency were purchased in 1980, 1 million board feet were harvested during 1981, and the contract is currently held, the volume to be counted as qualifying would be 4 million board feet. The volume to be counted is the volume of net merchantable sawtimber as specified in section A-2 of Forest Service contracts. In accordance with general Forest Service practice concerning timber tabulated on MBF (thousand board feet) basis, per acre material, culls and other non-sawtimber categories are not counted. Bureau of Land Management contracts measure only net merchantable sawtimber. All references throughout this legislation to timber volume in mmbf are to net merchantable sawtimber.

Subparagraph (2) (B) permits a purchaser holding more than 27.3 million board feet of timber as calculated above to buy out 55 percent of that volume, up to a maximum of 200 million board feet.

Subparagraph (2) (C) entitles a purchaser holding 27.3 million board feet or less of timber as calculated above to buy out up to 15 million board feet or one contract, whichever is greater in volume. The figure 27.3 million is used as a dividing point because below that number, a purchaser obtains a higher entitlement by utilizing the 15 million board foot minimum than by using the 55 percent entitlement. Above 27.3 million board feet, the 55 percent provision produces a greater entitlement than the 15 million minimum. A purchaser may, of course, buy out less than his full entitlement if he chooses.

Subparagraph (2) (D) also provides a "rounding up" provision so that purchasers, particularly smaller operators with only a few contracts, are not prevented from obtaining their buy-out entitlement simply because of the size distribution of their contracts. The rounding up provision permits the 55 percent or 15 million board feet limitation to be exceeded by a volume amount not to exceed the volume of the smallest volume contract bought out by the purchaser. This rounding up provision, however, does not apply if it would cause the purchaser's volume of buy-out volume to exceed 200 million board feet.

For example, suppose the purchaser holds five contracts totalling 40 million board feet, each with the following volume in millions of board feet (mmbf) as of both January 1, 1982 and the present:

	Volume (million board feet)	Potential loss
Contract:		
A	10	\$270 per thousand board feet.
B	8	\$240 per thousand board feet.
C	5	\$280 per thousand board feet.
D	6	\$180 per thousand board feet.
E	11	\$110 per thousand board feet.

His total buy-out entitlement would be $40 \text{ mmbf} \times .55 = 22 \text{ mmbf}$. Suppose the purchaser chooses to buy out contracts A, B and C. These total 23 mmbf, but this buy-out is permissible because the difference between his nominal entitlement of 22 mmbf and 23 mmbf is less than the volume of the smallest contract, 5 mmbf, which he is buying out, and he would fall short of his entitlement if he bought out only A and B. On the other hand, he might figure that since contracts B, C and D, total only 19 mmbf, he could buy out those plus contract A in order to reach his entitlement. But this would not be permitted because the difference between his nominal entitlement of 22 mmbf and 29

mmbf is greater than the volume of the smallest contract, 5 mmbf, which he wishes to buy out.

As a further example, consider an operator holding five contracts each of 4 million board feet. His total volume is 20 million board feet, so his buy-out entitlement is the minimum of 15 million board feet. Under the rounding-up provision, he could buy out four contracts at 4 million board feet each for a total of 16 million board feet, since 16 million exceeds 15 million by less (1 million) than the volume of the smallest contract he is buying out (4 million). Without the rounding-up provision, this operator could have bought out only 12 million board feet, well below the minimum entitlement.

These buy-out entitlements are to be considered as applying to timber contracts with both agencies as a whole. If, for example, a purchaser holds 200 million feet of qualifying Forest Service timber and 100 million feet of qualifying BLM timber, then his buy-out entitlement is $300 \text{ mmbf} \times .55 = 165 \text{ mmbf}$. The purchaser could choose to terminate only Forest Service timber totalling 165 mmbf, or he might terminate all his BLM timber plus 65 mmbf of Forest Service timber, or some other combination. His buy-outs need not be proportionally allocated between the agencies. No difficulty is foreseen in enforcing the buy-out limitation if each agency simply requires the purchaser to perform it of his qualifying volume and buy-out requests with the other agency.

Subparagraph 2(E) provides that a sale with no obligations pursuant to subparagraph (4) (B) shall be considered available for resale by the government upon payment, or arrangement for payment, of the buy-out charge. A sale with obligations pursuant to subparagraph (4) (B) shall be considered available for resale by the government upon payment, or arrangement for payment, of the buy-out charge and completion of the listed (4) (B) obligations, and in turn be subject to the Forest Service Region 6 sales limitations as provided in subparagraphs 5(B) and 5(C).

Paragraph (3)

Paragraph (3) establishes the mechanism for calculating the buy-out charge which the purchaser must pay. It also authorizes an appropriation to the appropriate secretary of the buy-out charges collected. The buy-out charges will flow to the Treasury, and through the normal congressional appropriations process, these amounts shall be available for appropriation back to the appropriate secretaries to cover the costs of reoffering returned contracts and for the further management of timber.

A purchaser's buy-out charge is determined by comparing his potential loss on all his timber sale contracts which qualify under subparagraph (2) (A) with his net book worth. The potential loss on qualifying contracts is determined by subtracting the current delivered log value from the delivered log cost based on the original bid price (subject to operation of any escalation/deescalation provision) of the qualifying volume in each contract. These determinations are to be made by the agency, not the purchaser.

Each agency will use the methods for determining "current delivered log value" and "delivered log cost" based on the current contract return as determined by the administering agencies.

"Net book worth" as used in paragraph (3) means the net worth figure at book value for a company as reported in its most recent annual or quarterly financial statement and shall be subject to verification by the administering agencies. As provided in subparagraph (3)(C), this figure shall be determined by an independent certified public accountant in accordance with generally accepted accounting standards for the timber industry. An "independent" CPA would be an accounting firm or practitioner as opposed to a CPA who is an employee of the timber company.

As provided in subparagraph (3)(B), such net book worth does not include the value of any outstanding uncut federal timber sales contracts.

Under existing law the agencies have the authority to request clarification, further explanation, or otherwise verify net book worth submissions to their satisfaction. Furthermore, it should be remembered that these net book worth statements to an agency will fall within the scope of 18 U.S. Code § 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

The three levels of buy-out charge are specified in subparagraph (3)(A). For companies whose potential contract losses exceed 100 percent of their net book worth, the buy-out charge is \$10 per mbf of currently held timber returned to the government. For companies whose potential losses on qualifying contracts are from in excess of 50 percent up to 100 percent of net book worth, the buy-out charge is 10 percent of the contract overbid but at least \$10 per mbf. For companies whose potential losses on qualifying contracts are 50 percent or less of net book worth, the buy-out charge is 15 percent of the contract overbid but at least \$10 per mbf. The volume currently remaining in the contract is the volume to be charged against the purchaser's buy-out entitlement and on which he pays the buy-out cost. The volume currently remaining in the contract normally is the volume estimated and stated by the agency when the contract originally was sold, less any volume cut, removed and paid for.

Subparagraph 3(E) provides for extended payment of the buy-out charge in recognition of the severe cash-flow problems facing companies which will be returning contracts to the government. Buy-out charges can be paid in quarterly installments over a period of up to five years. Interest will be fixed at the current rate for government borrowing as determined by the Secretary of the Treasury. The first such quarterly payment shall be paid at the time the arrangement for payment is made.

Paragraph (4)

Paragraph (4) discusses the physical condition of contracts returned to the government and provides discretion to the secretaries to reject the return of certain partially operated contracts.

Subparagraph (4)(A) provides that contracts returned on which no harvest has begun shall be returned in full. That is, a purchaser may not return certain units of a contract and retain other units.

Subparagraph (4)(B) provides that contracts under which harvest has begun shall be returned conditionally, with the return becoming final after certain obligations as determined by the secretary have been met. (See discussion in paragraph (1) and (5) for the effect of a conditional return upon the resale process and determination of Region 6 timber volume under contract.) The intent of subparagraph (4)(B) is that the various stages of work under a partially operated contract be completed to logical stopping points by the purchaser returning the contract. The Secretaries should use their discretion in determining logical stopping points on a contract-by-contract basis.

Subparagraph (4)(C) provides that the secretary may reject return of a contract on which harvest has begun if he determines, in his discretion, that the remaining unharvested portion is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would seriously disadvantage the government.

Paragraph (5)

Paragraph (5) provides for the integration of returned and defaulted timber sale contracts into the normal timber sales program, and establishes limitations on future Forest Service timber sale programs in Region 6 (Oregon and Washington) for certain years.

Subparagraph (5)(A) provides that timber from returned or defaulted contracts shall be offered for resale in an orderly fashion as part of, and not in addition to, the normal congressionally authorized timber sale program. This will be done in a manner to avoid any disruption in regional markets or artificial depression of domestic timber prices, which could result if returned or defaulted timber from the pool of economically inoperable contracts bid prior to January 1, 1982 were dumped onto the market in addition to the normal sale program. Defaulted contracts are included in this provision because their impact on markets would be the same as that of returned contracts. However, the volume of defaults is expected to be far less as a result of this legislation than if there were no buy-out legislation.

Paragraph (5)(B) and (C) limits future timber sales in Forest Service Region 6.

Subparagraph (5)(B) limits timber sales in Region 6 during fiscal 1984 to 4.3 billion board feet.

Beginning in fiscal 1985, the sales program in Region 6 will be limited by the volume of timber under contract. The Secretary of Agriculture will set, and periodically adjust as necessary, the maximum annual timber sale volume in Region 6 so as to achieve a volume of net merchantable sawtimber under contract in the region at the end of each fiscal year which does not exceed 12.3 billion board feet. The maximum annual sale volume set during the period of this cap cannot exceed 5.2 billion board feet of net merchantable sawtimber.

The figure 12.3 billion board feet is considered to be a representative volume of timber under contract in Region 6 under normal market conditions. The objective is to prevent the volume under contract from reaching the levels it reached during the early 1980's. To the extent markets were good and harvests were high, sales would proceed at

relatively high levels (up to the ceiling of 5.2 billion board feet) so as to retain a suitable volume of timber under contract. To the extent markets were poor and volume went unharvested, sales would be curtailed so as to keep the volume under contract from exceeding a suitable supply.

Administrative discretion to allocate sale offering targets among forests and districts of the region would continue. In disaggregating the Region 6 sales volume, the secretary should take into account the volume of timber under contract as well as historic sales volumes of the various forests and ranger districts, and should not discriminate among the various areas of the region.

For the purposes of determining the Region's volume of remaining timber under contract in calculating the sale program for fiscal 1985, the Forest Service should estimate the volume that would be bought out as a result of this legislation, then continually refine that number as the actual buy-outs occur. At the time a purchaser submits a buy-out request to the Forest Service, the Forest Service will immediately, for the purpose of the sale program calculation, deduct the remaining volume of that contract from the Region's volume of timber under contract. If the buy-out is not actually accomplished and the contract remains in effect, its remaining volume would be added back to the Region's volume of timber under contract.

The sales program limitations of subparagraph (5)(C) will continue through fiscal 1991 or the fiscal year in which timber contract extensions in Region 6 granted under the President's program of July 28, 1983 are completed, whichever is later. The President's program provides for 5-year contract extensions, some of which will not begin until at least 1986.

Paragraph (6)

Paragraph (6) provides deadline dates for implementation of the contract buy-out program.

Subparagraph (6)(A) provides that the secretary shall publish final rules for implementation of the program within 90 days after the date of enactment of the Act.

Subparagraph (6)(B) requires purchasers to submit buy-out requests within 90 days after the publication of final rules.

Paragraph (7)

Subparagraph (7)(A) and (B) provides that concerns which are affiliates shall be treated as if they were a single entity for purposes of determining a purchaser's buy-out limitation and net worth in connection with buy-out cost. The purpose of this provision is to assure that companies which buy timber under several names do not receive separate buy-out allocations for each purchasing entity, and to assure that a company's buy-out cost is not inequitably low simply because purchases are made in the name of one entity while the bulk of the net worth is retained under the name of another entity.

The definition of affiliates contained in subparagraph (7)(B) is adapted from the Small Business Administration's definition of affiliates, contained at 13 CR § 121.3-2(a). This regulation contains a number of further definitions and examples to which the secretaries should look for guidance in determining affiliation for purposes of this legislation.

Subparagraph (7) (C) defines purchaser, as discussed above in connection with paragraph (2).

Subsection (b) of H.R. 2838 as reported concerns the operation of the President's multi-sale 5-year timber contract extension program.

Paragraph (1)

Paragraph (1) provides that contracts bid prior to January 1, 1982, not bought out pursuant to subsection (a), and included in the President's multi-sale extension program of July 28, 1983, shall not be subject to any further extension of time for performance except as permitted under the President's program of July 28, 1983. The President's program, which is being implemented by the Secretary of Agriculture and the Secretary of the Interior, provides for the extension of certain timber sale contracts and requires the phased harvesting of these extended contracts.

The President's program is ratified by this legislation and continues in effect, subject to certain limitations specified in paragraph (2).

Contracts extended under the President's program and not bought out should be completed in accordance with that program and not be further extended at the conclusion of their 5-year extensions.

Interim extensions permitted under the President's program in advance of a 5-year extension, such as the so-called Soft II and conditional extensions, still are permitted. Contract term adjustments and other changes in deadline for performance which are permitted under the President's program also are permitted by the legislation.

Paragraph (2) provides that certain contract provisions imposed by the Secretary of Agriculture in connection with contracts extended under the President's program shall not be imposed. The specified contract provisions not to be imposed provide for reappraisal of timber in the extended contracts, inclusion of additional provisions for calculating damages for default, and for changes in basic scaling procedures. Where such conditions already have been imposed in contracts extended under the program, enactment of H.R. 2838 will nullify them. They should be replaced where appropriate by conditions which were in the contract prior to its 5-year extension.

Additionally, and for the same reason, the Secretary of Agriculture is not to impose on extended contracts any contract provision which was not being used in the timber sale program as of June 1, 1984. The purpose of this requirement is to avoid a situation in which purchasers would have to, as a practical matter, commit to extending contracts before knowing what conditions might be imposed in those extensions.

Section 3

Subsection 3(a) provides that, notwithstanding other provisions of law, the Secretary of Agriculture is directed to annually waive, without charge, all or a portion of the payment of rental fees required under the terms of a permit for use of certain National Forest System lands as organization camps by local units of the Boy Scouts of America, or such other nonprofit organization, when such group or organization is willing to perform services, on the National Forest System lands, which the Secretary determines are intended to yield a valuable benefit to the public and to the programs of the Secretary. If the organization whose fees are waived by the Secretary fails to fully per-

form such services, such organization shall not be entitled in the subsequent year to a waiver under the provisions of this section. This would not prevent, however, the organization from receiving a reduction in rental fees to which other similar nonprofit organizations are entitled under the regulations of the Forest Service.

Subsection 3(b) defines "other nonprofit organization holding an exemption under section 501(c) of the Internal Revenue Code, as amended; and a nonprofit association or corporation which is not controlled or owned by profitmaking corporations or business enterprises, and which is engaged in public or semi-public activity to further public health, safety, or welfare.

2. The committee also adopted an amendment to the title, to read: This act may be cited as the "Federal Timber Contract Payment Modification Act".

COST AND BUDGETARY CONSIDERATIONS

The Committee does not intend this measure (H.R. 2838) authorize any additional budget authority for fiscal year 1984 and fiscal year 1985 than that already available to the Secretaries of the Department of the Interior and the Department of Agriculture. The Committee intends that any fiscal year 1984 and fiscal year 1985 costs incurred from implementation of the bill be absorbed within funds otherwise available to the Department of the Interior and the Department of Agriculture.

The likelihood that the Committee would report related timber contract legislation (S. 916) was reflected in its March 15, 1984 report to the Committee on the Budget pursuant to section 301(b) of the Congressional Budget and Impoundment Control Act of 1974. Therefore, the Appropriation Committee of the Senate has had adequate notice of this authorization.

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 27, 1984.

HON. JAMES A. McCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2838, the Federal Timber Contract Payment Modification Act, as ordered reported by the Senate Committee on Energy and Natural Resources, August 1, 1984.

Section 2 of this bill authorizes the Secretaries of the Interior and Agriculture to allow timber purchasers to return a portion of their timber contracts to the federal government, upon payment of specified buy-out charges. The bill establishes eligibility criteria for buy-out privileges, as well as ceilings on volumes eligible for buy-out based on volume under contract of each individual timber purchaser. Buy-out charges could be paid over a period of up to five years, with interest set at government borrowing rates. H.R. 2838 also provides that returned contracts shall be reoffered as part of the normal congressionally au-

thorized timber sales program; sets caps on the sale of timber in Forest Service region 6 in fiscal years 1984 through 1991; and prohibits further revision of any contracts extended pursuant to the President's program of July 28, 1983.

The factors affecting the cost of this bill are very complex and difficult to project—including the number of likely defaults and the amount of default payments that would be collectible by the government if no legislation is enacted; the extent to which the timber companies would buy out existing contracts if the bill is enacted; and the effects of the limitations on changes in existing contracts. Because of the detailed nature of the data required to fully assess these factors, the Congressional Budget Office is unable to independently estimate the cost of H.R. 2838. We have, however, reviewed estimates prepared by the Forest Service, which are based on a very detailed analysis of individual timber contracts. We believe the Forest Service estimates represent a reasonable projection of the likely impact of this bill.

If the timber companies believe that timber prices will remain at about the current level for the next several years, and if all companies holding contracts that they consider to be unprofitable choose to buy out up to the maximum volume allowed under this bill, the Forest Service estimates that the buy-out payments would total about \$200 million. The bill provides that companies may elect to pay the buy-out charges in quarterly payments over five years with interest set at government borrowing rates. Thus, if one-quarter of these buy-out receipts were collected in one-time payments and the rest in installments over five years, federal receipts would increase by about \$90 million in fiscal year 1985 and about \$40 million in each of fiscal years 1986–1989.

These buy-out payments would be more than offset by a loss in receipts to the federal government—from a decrease in default payments and reductions in harvest volumes resulting from the buy out. According to the Forest Service, lost receipts would total about \$1 billion over the four fiscal years beginning in 1988, assuming roughly constant timber prices. On a present value basis, the net cost to the federal government of the buy-out program would be in excess of \$400 million, excluding any effects on taxes paid by timber companies.

Section 3 of the bill directs the Secretary of Agriculture to waive, annually, payment of certain rental fees by nonprofit organizations when such organizations are willing to perform valuable services on the land. In fiscal year 1983, approximately \$170,000 was received in payments from eligible nonprofit groups. Enactment of this provision would result in a cost to the federal government of \$300,000 to \$500,000 per year, from forgone rental fees and additional administrative costs.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2838. The bill is not a regulatory measure in the sense of imposing

Government-established standards or significant economic responsibilities on private individuals and businesses; however, in order to participate in this program, timber purchasers may be required to provide certain financial information.

Some additional paperwork would result from the enactment of H.R. 2838 as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the Committee from the Department of Agriculture setting forth executive agency recommendations relating to H.R. 2838 and S. 2753 are set forth below:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, July 18, 1984.

HON. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 2753, a bill "To provide for the buy-out of certain contracts for Federal timber."

The Department of Agriculture opposes the enactment of S. 2753. The bill has serious deficiencies in terms of a lack of equity among members of the forest products industry, and would be administratively infeasible. We strongly urge that the existing extension policy be given a chance to work before other alternatives are considered or adopted.

S. 2753 would direct the Secretaries of Agriculture and the Interior to permit purchasers of timber from Federal lands under their respective jurisdictions to return to the Government certain of those contracts. Thus, timber sales administered by the Forest Service, USDA, and the Bureau of Land Management, USDI, would be affected. The purchaser would be required to pay a buy-out charge and, upon so doing, would be released from further obligation to complete the contract, except when the timber has been partially harvested. The purchaser would have to carry out contracted obligations to a logical stopping point for the units of the sale upon which harvest has begun.

Contracts qualified for buy-out under S. 2753 must have been bid prior to January 1, 1982, and be currently held. The volume of timber which may be bought out would be determined by the volume of timber under contract to the purchaser. A purchaser holding more than 27,300,000 board feet would be able to buy out 55 percent of such volume up to a maximum of 200,000,000 board feet. A purchaser holding less than 27,300,000 board feet would be entitled to buy-out up to 15,000,000 board feet or one contract, whichever is greater.

The buy-out amount would be determined on the basis of the purchaser's expected loss on the contract. This loss would be determined by the respective Departments by subtracting the current delivered log value from the delivered log cost used in the appraisal. If this loss exceeds the net book worth of the purchaser (as determined by a certified public accountant), the buy-out cost would be \$10 per one thousand board feet (MBF). If the loss is more than 50 percent of the net book worth, the buy-out cost would be 10 percent of the contract

overbid but at least \$10 per MBF. If the loss is less than 50 percent of the net book worth, the buy-out cost would be 15 percent of the contract overbid but at least \$10 per MBF.

Timber resulting from contracts which are bought out, and timber from contracts which have defaulted, would be resold as a part of the normal annual authorized timber sale program for the two agencies. For Forest Service timber sales, the returned or defaulted timber would be given preference in the annual program. The bill would place a cap on the annual timber sale program in Forest Service Region 6 (Oregon and Washington) of 4.3 billion board feet in Fiscal Year 1984. For the following fiscal years through 1991, the annual timber sale program for Region 6 would be set so as to hold the total volume under contract to no more than 12.3 billion board feet, and not to exceed 5.2 billion board feet to be sold in any year.

The bill requires that final rules to implement the provisions regarding buy-out of timber contracts be published in the Federal Register within 90 days of enactment. They would require the purchaser to submit requests for buy-outs within 90 days of publication.

The buy-out provision of S. 2753 could operate independently of the Forest Service Timber Sale Contract Extension Policy implemented on December 7, 1983, pursuant to the President's July 27, 1983, decision to grant 5-year extensions of these contracts without payment of interest. Thus, purchasers could participate in both programs; a purchaser could request buy-out of a contract which had already been extended. No other extensions of time would be allowed a purchaser holding contracts not bought-out or extended under the 5-year extension policy.

However, a separate provision of the bill (Section 2(b)(2)) would provide that those contracts extended under the 5-year extension policy would not be subject to reappraisal nor could the extended contracts include any additional provisions regarding calculation of damages for default or changes in basic scaling procedures, or any other contract provision which was not in the Forest Service Timber Sale program as of March 1, 1984. Thus, the requirements currently imposed by the Forest Service upon purchasers who request extension of time under the 5-year extension policy would be retroactively voided. We strongly object to these modifications of the 5-year extension policy.

S. 2763 has as its basic purpose the granting of a broader form of relief to Federal timber purchasers than that presently authorized. These Federal purchasers hold contracts bid at prices higher than the current market will support. The contracts were bid in the period 1977-1980 at prices as much as three to four times the appraised price. The reasons this occurred have been previously delineated to this Committee. Suffice it to say that these bids were much higher than justified by the markets that prevailed at that time. They were based both on the expectation of higher lumber and plywood prices in the future, and potential further reductions in timber harvest levels on Federal lands. The sharp reduction in housing starts from 1980 to 1982 drastically reduced market prices for lumber and plywood.

The Forest Service estimated that on January 1, 1983, 36.1 billion board feet of National Forest timber was under contract. About 16.6 billion board feet (worth \$5.0 billion) of this uncut volume under contract was estimated to be unprofitable to operate if the contracts

were to be operated within the contract terms. If the timber is not harvested by the contract date, the contract is in default. If a contract defaults, the Forest Service resells the timber, and the purchaser is liable for damages in the amount of the difference between the contract price and the price obtained on resale, plus the costs incurred to make the resale. For some purchasers potential damages may be so great that it may not be possible to avoid bankruptcy if required to perform the contract by its termination date.

This situation posed a serious threat to the Western forest products industry. A loss of manufacturing capacity, concentration of the industry into fewer but larger firms, and economic impacts on local dependent communities were some adverse effects envisioned.

The situation brought forth proposed legislative and administrative remedies. Several kinds of contract relief were proposed in legislation that received consideration by Congress in 1982 and 1983, although no legislation was enacted. A series of extension of contract termination dates for the troubled contracts were implemented by the Forest Service in the period of 1980 to 1982 under the authority of section 14(c) of the National Forest Management Act of 1976. The agency also revised its timber sale program to offer sales of shorter length and smaller volumes, and changed procedures for selling timber to discourage the possibility of a recurrence of high bidding. These administrative remedies did provide some relief, but were later found to be inadequate to resolve the problem.

This led to a renewed effort to develop administrative relief. This effort culminated in July 1983 with the President's announcement. Assistant Secretary of Agriculture John B. Crowell, Jr., in testimony before the Subcommittee on Forests, Family Farms and Energy on February 28, 1984, described the discussions that occurred within the Administration that led to the President's decision to grant 5-year extensions of Forest Service contracts without interest. These extensions will allow most purchasers to work their way out of their contract problems and avoid defaults. We recognize that the extension policy will not solve all the problems resulting from the high priced contracts. Defaults have occurred on some of the high-priced contracts and some insolvencies may result.

We believe that the extension policy is the most appropriate relief that can be granted for these high-priced contracts at this time. Upon the publication of regulations on December 7, 1983, purchasers were given until February 15 to file multisale extension plans and thereby request extensions. The multisale extension plans must include an operating schedule that specifies how much timber the purchaser will harvest during each year the plan is in effect. This operating schedule is associated with a payment schedule for the timber included in the plan that requires minimum periodic payments whether or not the timber is harvested. We have received 485 multisale extension plans from 448 purchasers, involving some 3,158 contracts and in excess of 23 billion board feet. The Forest Service has begun approving the plans and granting extensions.

It is essential that this administrative relief be given an opportunity to work. Purchasers should not have major problems as the extensions get underway, as they will probably schedule and begin operating their lower priced sales first. Then, with steady demand for forest products in the following years, the remaining volume could be harvested with-

out insolvency resulting for most purchasers. To impose a complicated and costly buy-out procedure upon the agencies before the purchasers' harvesting schedules have been initiated and even before the extension policy has been fully implemented would be inappropriate. We urge the Committee to delay any action on the bill until the extension policy's effects can be evaluated. We will work closely with the Committee in providing information on the results of the extension policy.

While our objections to S. 2753 are directed to all of its provisions, we want to emphasize to the Committee that we strongly object to the provisions in section 2(a)(5)(B) and (C) that would place a limit on the annual volume that would be offered for sale in Forest Service Region 6. We believe that the public interest is not well served by placing an arbitrary limit on volumes sold in one of the principal timber producing regions of the Nation, particularly when it is likely that the strong demand for manufactured and wood products will continue. Furthermore, the procedure that would be required to implement the annual limit on the sales program would not be consistent with the budgetary process.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD E. LYNCH,
Acting Secretary.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, August 9, 1984.

HON. JAMES A. MCCLURE,
*Chairman, Committee on Energy and Natural Resources, U.S.
Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Department of Agriculture would like to make you aware of the Administration's opposition to H.R. 2838, a bill "To provide for the buy out of certain contracts for Federal timber." August 1, the Energy and Natural Resources Committee favorably reported H.R. 2838, which, as amended, would allow certain purchasers of timber from National Forest System and public lands to buy out of a portion of their contracts.

The Administration is strongly opposed to this legislation.

The bill would be very costly to the taxpayer. The Forest Service estimates that this legislation would result in losses to the Federal Government of from \$236 million to \$427 million over measures already initiated administratively to provide relief to purchasers of high priced contracts.

Passage of this bill would benefit most those purchasers who bid most imprudently for Federal timber sales. It would be inequitable to those purchasers who bid most responsibly, but, by doing so, failed to purchase adequate supplies of timber.

This bill has as its purpose the granting of a broader form of relief to Federal timber purchasers than that presently authorized. These purchasers hold contracts bid at prices higher than the current market will support. We have estimated that as of January 1, 1983, about 16.6 billion board feet of the 36.1 billion board feet than under contract

was unprofitable to operate. If the timber is not harvested by the contract date, the contract is in default and the purchaser is liable for damages in the amount of the difference between the contract amount and the price obtained when the timber is resold, plus the costs incurred to make the resale. For some purchasers, potential damages may be so great that it may not be possible to avoid bankruptcy if required to perform the contract by its termination date. A serious disruption to the western forest products industry could result if such defaults and bankruptcies occurred.

It was to prevent this disruption from occurring that the Administration has made available to these Federal timber buyers administrative relief. In July 1983, the President authorized the granting of 5-year extensions of Forest Service contracts without requirement to pay interest. These extensions are intended to allow most purchasers to work their way out of their contract problems and thus avoid defaults. While we recognize that the extensions will not solve all of the problems resulting from the high priced contracts, we are of the firm belief that they are the most appropriate and equitable relief that can be granted for the troubled contracts at this time. This program has been in effect for less than one operating season and should be given a full opportunity to work before other alternatives are adopted.

Purchasers should not have major problems as the extensions get underway, as they will likely schedule and begin operating their lower priced sales first. Then, with steady demand for forest products in the following years, the remaining volume could be harvested without insolvency resulting for most purchasers. To impose a complicated and costly buy-out procedure upon the agencies before the purchasers' harvesting schedules have been initiated and even before the extension policy has been fully implemented would be inappropriate.

While our objections to H.R. 2838 are directed to all of its provisions, we want to emphasize that we have particularly strong objections to the provisions that would place a rigid limitation on the annual volume that would be offered for sale in Forest Service Region 6 (Oregon and Washington). We believe that the public interest is not well served by placing an arbitrary limit on volumes sold in one of the principal timber producing regions of the Nation, particularly when it is likely that the strong demand for manufactured wood products will continue. This limitation could also have a major adverse effect on the Forest Service's work force in Region 6, making it difficult to respond to future increases in timber demand.

We are also strongly opposed to the provision of the bill which would prevent the addition of new conditions on sales extended for 5 years. The result of this provision will be to allow purchasers to default their contracts after 5 years with only limited financial consequences. This would not be financially responsible and could encourage the kind of speculative bidding in the future which led to the current problems in the timber industry.

For additional background on this issue, we have enclosed the Department of Agriculture legislative report on S. 2753, which we sent to the Chairman of the Agriculture, Nutrition and Forestry Committee on July 18, 1984.

Sincerely,

JOHN R. BLOCK,
Secretary.

Enclosure.

ADDITIONAL VIEWS OF MR. HATFIELD

As the author of the amendment providing for the timber contract relief program, which the Committee adopted, I feel it is important to provide some additional explanations as to the intent of its provisions. I intend to discuss these provisions further when the bill is considered by the Senate so that there will be a clear legislative history to provide guidance for its implementation.

It is incumbent, I believe, that the administering agencies, the Forest Service and the Bureau of Land Management, use discretion in implementing the provisions of this legislation so as to not inappropriately narrow the legislation's applicability. The agencies should understand that different situations will arise depending on the purchaser's individual situation regarding the buying-out of contracts. The agencies should recognize these differences in implementing the program.

Each agency will determine "current delivered log value", and "delivered log cost" based on the current contract return as determined by the administering agencies. The current log value should be determined as of a date reasonably close to the time period for submitting buy-out requests, certainly no earlier than June 30, 1984. I would expect the agencies to use currently available data and calculation methods for these determinations as those provided by Timber Data Company. It would be more efficient for the agencies to continue this process rather than attempt to create some entirely new mechanism.

The calculation for net book worth as provided in paragraph 3 has particular implications for smaller firms. It is not intended that special audits or appraisals be made either by companies or by federal agencies in connection with determining net book worth. It should be recognized, however, that some smaller companies that normally would not have occasion to obtain CPA determinations would have to do so for the purpose of meeting the provisions of this paragraph. The agencies should recognize in their implementing regulations that large publically held companies routinely issue quarterly statements while smaller companies may compute their balance sheets only annually. Even for a company making only annual calculations, and allowing for a lag time in which to make those calculations, it should not be expected that any net worth determination should be as of a date more than 15 months prior to the date of buy-out requests.

All deposits and all unused effective and earned purchaser road credits from a bought-out Forest Service contract should be credited against the purchaser's buy-out charges. Where a purchaser has completed roads in connection with sales of timber by the Bureau of Land Management, the timber sale appraisal allowance for the value of such roads should be credited against the purchaser's buy-out charges.

The buy-out charge should be considered a legislatively negotiated price to be paid for the return of a contract, not a penalty.

In order to prevent deterioration and waste of timber, it is intended that purchaser's be permitted to return to the government contracts containing felled and bucked timber, and decked right-of-way timber. Resale of this timber at market prices normally is more likely to result in its utilization than is forcing purchasers to either remove it or ultimately default the contract. The secretary does have discretion under paragraph 4(B), however, to require removal of deteriorated timber if in his discretion that will best utilize the resource. Under the provisions of paragraph 4(B), the secretary may require that felled and bucked timber be decked and brought to the landing site. Where completion of a stage of road construction is required, the agency should not require removal of the right-of-way timber.

Subparagraph 4(B) provides that contracts under which harvest has begun shall be returned to the agency conditionally, with the return becoming final after certain obligations, as determined the agency are met. This provision is particularly important in that the purchaser and the administering agency must determine logical stopping points on a contract-by-contract basis consistent with the objective that the returned contract be in a condition suitable for resale while minimizing the amount of additional work which the returning purchaser must perform. It is important that the agencies apply a rule of reason in these cases and not apply inflexible standards which impede the overall objectives of the legislation.

In those cases where harvest and removal of timber is required, the agencies should reduce the volume of timber on which the purchaser's buy-out has been calculated. Initial buy-out payments made by the purchaser may be applied by the purchaser toward the payment for such harvest and removal to the extent that his buy-out charge has been reduced.

Subparagraph (6) (B) requires that the purchaser submit buy-out requests within 90 days after the publication of final rules by the administering agency. It is important, I believe, that the agency give the purchaser the opportunity to substitute a contract or contracts for buy-out if the agency rejects a buy-out request for a contract or contracts during the 90 day initial period.

Subparagraph (5) (A) provides that timber from returned or defaulted contracts be given preference for resale in the agency timber sale programs. The intent of this provision is that where other factors are similar, the agencies should offer returned or defaulted timber first before offering new sales. From an economic point of view, these sales should be offered first because of cost savings to the government. They have already received extensive study of such matters as boundaries, rights of way and environmental factors; timber volume and sale designs have already been surveyed, and personnel have already administered the sale. Reoffered sales, however, should be reviewed and updated in order that any newer environmental standards can be taken into account. It is also anticipated that the agency may combine or otherwise realign some returned sales, such as those which have already been partially operated, and that some sales may not be re-offered at all due to some changed condition.

A preference for reoffering returned or defaulted sales as compared to sale offering comprised of all new sales will tend to reduce the need for and cost of near-term road construction.

This preference for reoffering of returned and defaulted sales is not, however, an absolute mandate. For example, a resale of "green" timber could appropriately be deferred in favor of the sale of salvage timber in need of urgent removal. Sale offering also must take into account the needs of industry and availability of timber in terms of such factors as location and species. If a particular ranger district, for example, has no inventory of returned or defaulted contracts, it is not the intention of this provision that this ranger district could not sell timber until other districts and forests had exhausted their inventory of returned or defaulted contracts. Similarly, if some industry in an area is dependent on a regular supply of hemlock, and the return inventory in that area consists only of Douglas fir, it is not the intention of this provision that new hemlock sales must be held up pending resale of the Douglas fir inventory. The agencies also should take personnel management concerns into account.

Subparagraph (7)(B) refers to the determination of affiliates and is adapted from the Small Business Administration's definition of affiliates. The legislation is not intended to include affiliates of a company which are not engaged in the logging or forest products industry and I would not expect the agencies to include such affiliates in the development of regulations to implement this portion of the legislation.

In some situations, a forest products operation and a non-forest products operation may be controlled by a holding company whose financial statements are prepared on a consolidated basis. Where such a structure may lead to difficulties in preparing a financial statement limited solely to a forest products operation, it is intended that the agencies act flexibly and permit reasonable assumptions to be made about such matters as allocation of equity and debt.

MARK O. HATFIELD.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act, H.R. 2838, as reported.

